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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

RAVI WHITWORTH, JAVIER FRIAS,
GREG CARRANZA, and JOSHUA
ARGUELLES on behalf of themselves, the
State of California, and all other aggrieved
employees,

Plaintiffs,

V.

SOLARCITY CORP. and TESLA ENERGY OPERATIONS, INC.

Defendants.

Case No. 16-cv-01540-JSC

**PLAINTIFFS' UNOPPOSED MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (PAGA)
SETTLEMENT**

Date: March 2, 2023

Date: March 2, 1990
Time: 10:00 a.m.

Courtroom: Courtroom 8 - 19th Floor

Judge: Jacqueline Scott Corley

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NOTICE OF MOTION

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on February 16, 2023, at 10:00 a.m. or as soon
4 thereafter as the matter may be heard, in Courtroom 8, 19th Floor of this Court, located 450
5 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Ravi Whitworth, Javier Frias, Greg
6 Carranza, and Joshua Arguelles (“Plaintiffs”), on behalf of themselves and all others similarly
7 situated, will, and hereby do, move this Court: to approve the Private Attorneys General Act
8 (“PAGA”) Settlement Agreement between the Plaintiffs and Defendants SolarCity Corporation
9 (now known as Tesla Energy Operations, Inc. (“Tesla”)) and Tesla, settling the representative
10 claims under California law; and grant service awards to each of the four named Plaintiffs.

11 This Motion is based upon: the Memorandum of Points and Authorities in Support of
12 Plaintiffs' Motion to Approve PAGA Settlement; the Declarations of Attorneys Jahan C. Sagafi,
13 Esq., Christina A. Humphrey, Esq., Daniel R. Rodriguez, Esq., the Declarations of Plaintiffs
14 Joshua Arguelles, Greg Carranza, Javier Frias, and Ravi Whitworth; the Declaration of Sean
15 Hartranft of Settlement Administrator ILYM; any oral argument of counsel; the complete files,
16 records, and pleadings in the above-captioned matter; and such additional matters as the Court
17 may consider. A Proposed Order is submitted herewith.

19 | Dated: January 13, 2023

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Ravi Whitworth, Javier Frias, Greg Carranza, and Joshua Arguelles (“Plaintiffs”) request approval of a Private Attorneys General Act (“PAGA”) settlement under the California Labor Code section 2698, *et seq.*, with Defendants SolarCity Corp. and Tesla Energy Operations, Inc. (SolarCity is now known as Tesla Energy Operations, Inc.) (“Defendant” or “SolarCity” for ease of reference). Under the Settlement Agreement, SolarCity will pay \$1,500,000, with no reversion. *See* Declaration of Christina A. Humphrey (“Humphrey Decl.”), ¶ 42, Ex. 3 (“PAGA Representative Action Settlement and Release Agreement” (“Settlement Agreement”)). The Settlement resolves this action and the overlapping related case *Arguelles v. Tesla Energy Operations, Inc.*, Los Angeles Superior Court Case No. 20-STCV-41704 (“*Arguelles*”), the allegations from which are included in the Fifth Amended Complaint, ECF No. 186. The Settlement does not resolve or release any non-PAGA claims, including for wages, premium pay, business expenses or statutory penalties.

15 The proposed settlement is fair, reasonable, and adequate based on Plaintiffs' 16 investigation of the facts, informal discovery, negotiations, zealous litigation, formal discovery, 17 and resulting detailed knowledge of the factual and legal issues in this action. The difficulties of 18 litigation, the lengthy and uncertain process of establishing violations for each pay period, the 19 Court's discretion to reduce PAGA penalties, and other potential risks were carefully considered 20 by Plaintiffs and Plaintiffs' counsel in agreeing to the settlement.

21 It is within the discretion of this Court to approve the proposed settlement. Accordingly,
22 Plaintiffs respectfully request that the Court: (1) approve the proposed Settlement Agreement, (2)
23 approve the requests for attorneys' fees and costs, administrative costs, and service awards to the
24 Named Plaintiffs, and (3) dismiss the lawsuit with prejudice.

25 The litigation has been extensive and hard fought, over the course of six years, with
26 SolarCity retaining four different sets of counsel during the different phases of the litigation.
27 The Parties engaged in four mediations, one with each set of new defense counsel. The parties

1 engaged in substantial briefing on novel, complex procedural issues, which were shaped by the
2 U.S. Supreme Court’s groundbreaking ruling in *Lewis v. Epiq Systems* and its recent decision
3 *Moriana v. Viking River Cruises*. Plaintiffs’ counsel have spent thousands of hours litigating the
4 case, incurring nearly \$200,000 in expenses. The Parties reached the \$1.5 million settlement
5 while the Court was poised to issue its *Moriana* decision, which threatened to wipe out
6 Plaintiffs’ entire court case. In light of the strengths and weaknesses of the case, this substantial
7 recovery is a strong result for the State and its workers.

II. FACTUAL AND PROCEDURAL BACKGROUND

9 **A. Allegations**

10 During the liability period covered by the action (April 14, 2015 to September 1, 2022),
11 SolarCity (including Tesla, which acquired SolarCity on August 1, 2016¹) has provided solar
12 panel design, installation, and maintenance services throughout California. Plaintiffs Greg
13 Carranza, Javier Frias, Ravi Whitworth, and Joshua Arguelles worked for SolarCity as hourly
14 Residential Installers, installing solar panels at residential properties.

Plaintiffs bring this action under PAGA only on behalf of themselves and other employees who worked for SolarCity and/or Tesla in similar job roles installing, repairing, and/or maintaining solar power units in California from April 14, 2015 through September 1, 2022 (“Aggrieved Employees”). Plaintiffs allege that SolarCity has violated the California Labor Code protections applicable to Aggrieved Employees by (1) failing to provide proper meal and rest breaks; (2) failing to reimburse for reasonable work expenses such as mileage driven to work sites in their own vehicles, mobile phone use, and tools; (3) failing to incorporate nondiscretionary bonuses into the regular rate of pay when calculating overtime; (4) failing to compensate for all straight time and overtime worked – including time spent traveling between work sites (“drive time”) during the workday, off-the-clock time spent undergoing online training, and off-the-clock time spent on pre- and post-shift activities; (5) failing to provide

¹ For ease of reference, lead Defendant SolarCity is used to describe both Defendants as applicable, unless otherwise indicated.

1 accurate wage statements; and (6) failing to pay all wages due upon separation of employment.

2 SolarCity zealously asserted merits defenses as to each of these claims. As to the first
 3 claim, SolarCity contended that it has always had a compliant written policy to provide meal and
 4 rest breaks and allow Aggrieved Employees to waive those breaks individually, through daily
 5 timekeeping submissions by each employee. Furthermore, SolarCity has produced evidence that
 6 the vast majority of Installers signed online forms stating that they voluntarily waived their meal
 7 breaks and either took their full rest breaks or voluntarily chose not to take full meal and/or rest
 8 breaks. SolarCity also asserts that it paid thousands of meal and rest period premiums when
 9 employees reported that they were prevented from taking meal periods and/or it appeared that a
 10 rest break was not provided to an employee.

11 Second, SolarCity emphasized that it has always maintained and disseminated
 12 reimbursement policies, through which alleged Aggrieved Employees could be and were
 13 reimbursed for any purchase of solar panel installation tools, mileage expenses incurred when
 14 they drove their personal vehicles for work purposes, and personal cell phone use for work
 15 purposes. Defendant also asserts it reimbursed thousands of Aggrieved Employees over two
 16 million dollars for reasonable expenses when they had properly requested reimbursement.

17 Third, Defendant argued that it always properly included nondiscretionary bonuses when
 18 calculating the employees' regular rate of pay, and that it provided them with explanations of
 19 how nondiscretionary bonuses would be factored into the regular rate of pay.

20 Fourth, SolarCity argued that it has always maintained policies requiring Aggrieved
 21 Employees to record all hours worked, and it provided them with numerous options to ensure
 22 that they were paid for all hours worked, including the ability to retroactively enter their shift or
 23 end times and to notify their manager, HR, or the payroll department about any needed
 24 corrections to time records.

25 Fifth and sixth, SolarCity argued that the absence of underlying substantive violations
 26 rendered the wage statement and late payment claims meritless.

1 **B. Litigation and Arbitration**

2 On March 29, 2016, Plaintiff Whitworth filed this action as a proposed class and
 3 representative PAGA action. Humphrey Decl., ¶ 10. On July 25, 2016, Plaintiffs Carranza and
 4 Frias filed a similar action as a class action in Santa Cruz Superior Court, No. 16CV011887. *Id.*
 5 at ¶ 13. On September 12, 2016, Plaintiffs Farrohki and Whitford joined as plaintiffs in Carranza
 6 and Frias's state court action. *Id.* at ¶ 14. Soon thereafter, Plaintiffs' counsel in the two cases
 7 joined forces, and the four state court Plaintiffs agreed to dismiss their state court action and join
 8 this action in a single case to be litigated by both sets of Plaintiffs' counsel together. *Id.*
 9 Plaintiffs filed a consolidated First Amended Complaint on March 3, 2017, including all five
 10 plaintiffs. *Id.* at ¶ 17.

11 The first contested issue in the action was litigation over the enforceability of SolarCity's
 12 arbitration agreements, which had class action waivers. *Id.* at ¶ 12. In 2016, SolarCity moved to
 13 compel Plaintiffs to individual arbitration, and the Court stayed the case pending the Ninth
 14 Circuit Court of Appeal's decision in *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir.
 15 2016) regarding the enforceability of class action waivers in arbitration agreements. Humphrey
 16 Decl., ¶ 12. Thereafter, the Court denied SolarCity's motion to compel arbitration. *Id.* at ¶ 15.
 17 SolarCity appealed. In 2017, SolarCity moved to stay the action in light of the United States
 18 Supreme Court grant of certiorari in *Morris*. *Id.* at ¶ 18. SolarCity also moved again to compel
 19 arbitration. *Id.* at ¶ 19. The Court denied SolarCity's second motion to compel arbitration and
 20 granted in part and denied in part its motion to stay, allowing the parties to continue discovery as
 21 to Plaintiffs' individual and representative PAGA claims. *Id.*

22 In January 2018, the parties mediated the action with experienced mediator Michael Loeb
 23 of JAMS. *Id.* at ¶ 38. The parties were unable to reach a settlement. Humphrey Decl., ¶ 38.

24 In July 2018, the Supreme Court issued its landmark decision in *Epic Systems Corp. v.*
 25 *Lewis*, 138 S. Ct. 1612 (2018), upholding the enforceability of class action waivers in arbitration
 26 agreements. *Id.* at ¶ 21. Plaintiffs agreed to withdraw their argument that SolarCity's arbitration
 27 agreements violated workers' rights to concerted activity to pursue improvements in their

1 working conditions (which *Epic* had foreclosed), dismissed their class claims, and narrowed the
 2 case to only allege PAGA representative action claims. SolarCity then filed a third motion to
 3 compel arbitration, arguing that *Epic* supported forced arbitration of PAGA claims, implicitly
 4 overruling *Iskanian v. CLS Transportation Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014). *Id.* at ¶
 5 21.

6 In August 2018, the Court rejected SolarCity’s argument that the PAGA claims must be
 7 arbitrated but agreed with SolarCity to stay the PAGA claims while Plaintiffs individually
 8 arbitrated their non-PAGA claims. *Id.* at ¶ 22.

9 In December 2018, SolarCity replaced its in-house counsel and CFO and switched
 10 outside counsel from Littler Mendelson LLP to Shepard Mullin LLP. *Id.* at ¶ 9. In 2019, the
 11 parties mediated for the second time, this time with David Rotman, one of the most renowned
 12 mediators of complex employment actions in the country, but were again unable to reach a
 13 settlement. Humphrey Decl., ¶ 39.

14 In November 2019, the parties resolved the individual cases for each of the five Plaintiffs
 15 in arbitration before JAMS. *Id.* at ¶ 40. At that point, SolarCity retained GBG, LLP for the
 16 arbitrations, while Shepard Mullin continued to represent SolarCity in the (then-stayed)
 17 litigation. *Id.* The parties engaged in the arbitrator selection process, exchanged voluminous
 18 written discovery, and conducted depositions. *Id.* at ¶¶ 34-37. Plaintiffs deposed SolarCity’s
 19 Persons Most Knowledgeable and supervisors. *Id.* at ¶ 36. SolarCity deposed Plaintiff Carranza
 20 for three days and Plaintiff Whitworth for one day. *Id.* On November 9, 2020, as additional
 21 deposition dates and the five arbitration hearing dates approached (beginning January 2021
 22 onward), the parties successfully mediated with the Honorable Jeff Winikow, resolving all non-
 23 PAGA claims in the five individual cases. Humphrey Decl., ¶ 34, 40. Plaintiffs were unable to
 24 resolve the PAGA claims, and the parties agreed that all discovery in the arbitrations could be
 25 used in the PAGA litigation. *Id.* at ¶ 40.

26 Thereafter, the PAGA case resumed in this Court, and Plaintiffs filed the Fourth
 27 Amended Complaint to clarify the PAGA-only scope of the action. *Id.* at ¶ 29. On November 8,
 28

1 2021, SolarCity retained its fourth set of lawyers in the litigation: Morgan Lewis. *Id.* at ¶ 30.

2 In May 2022, plaintiff's counsel in *Arguelles* contacted Plaintiffs to discuss coordinating
 3 efforts on behalf of all Plaintiffs and Aggrieved Employees. *Id.* at ¶ 31. Plaintiffs agreed, with
 4 Mr. Arguelles retaining Plaintiffs' counsel (Outten & Golden LLP and Christina Humphrey Law
 5 P.C.) to litigate his claims in *Arguelles* (and eventually, per the Fifth Amended Complaint filed
 6 here, ECF No. 186, in this action as well). *Id.* at ¶ 32.

7 During summer 2022, the parties recommenced settlement discussions, this time with a
 8 fourth mediator, Michael Dickstein, a highly experienced wage and hour mediator including for
 9 PAGA claims. Humphrey Decl., ¶ 41. The parties held a mediation on June 6, 2022 and reached
 10 a settlement in principle on July 6, 2022. *Id.*

11 1. Related Cases

12 On May 16, 2022, SolarCity informed Plaintiffs of two other PAGA actions and one class
 13 action with similar allegations covering an overlapping group of employees:

- 14 1. *Lance Amato v. Tesla Energy Operations, Inc.*, Case No. 22CV394097 (Santa Clara
 15 Superior Court) (this PAGA action was filed in 2022 and has been stayed through
 16 settlement approval of this case).
- 17 2. *Anthony Lack v. Tesla Energy Operations, Inc and Tesla, Inc.*, Case No.
 18 22CV394850 (Santa Clara Superior Court) (this PAGA action was subsequently
 19 individually resolved and dismissed).
- 20 3. *Paul Polson v. Tesla Energy Operations, Inc.*, Case No. 3:22-cv-02648 (N.D. Cal.)
 21 (this class action was filed in 2022 and has been stayed pending settlement approval
 22 in this case).

23 SolarCity has filed a Notice of Related Case in each of the cases and informed plaintiffs
 24 in each action of this settlement. Declaration of Jahan C. Sagafi ("Sagafi Decl."), ¶ 49.

25 III. SUMMARY OF SETTLEMENT TERMS

26 For a more detailed breakdown of the Settlement Terms, refer to Humphrey Decl. at ¶¶
 27 42 a-g). Defendant has agreed to pay a Total Settlement Amount of \$1,500,000, covering: (1)

1 the PAGA Fund (75% of which is payable to the LWDA and 25% of which is payable to the
 2 Aggrieved Employees in Individual PAGA Payments); (2) Settlement Administrator's fees and
 3 costs expected to be \$22,500; (3) Plaintiffs' counsel's requested attorneys' fees of up to 40% of
 4 the Total Settlement Amount (\$600,000) and actual out-of-pocket costs (\$180,000); and (4)
 5 Service Awards for the four named Plaintiffs (\$10,000 each, for a total of \$40,000).

6 The Aggrieved Employees covered by the Settlement are current and former nonexempt
 7 employees who worked for SolarCity as Installers, with job titles such as Photo Installer, Junior
 8 Installer, Crew Leader, PV Installer, and other similar job roles to install, repair, and/or maintain
 9 solar power units in customers' homes or worksites in California ("Covered Positions") during
 10 the PAGA Period of April 14, 2015 through September 1, 2022. Each Aggrieved Employee, on
 11 behalf of themselves, the LWDA, and the State of California, will release Defendant and related
 12 entities from all PAGA claims that are alleged or that could have been reasonably alleged based
 13 on the facts asserted in the operative complaints or LWDA letters during the PAGA Period. As
 14 is standard in PAGA settlements, Aggrieved Employees release such claims regardless of
 15 whether they cash PAGA payment checks, because there is no opt-out right in PAGA
 16 settlements.

17 In recognition of the value they have created, the time they have spent, and the risks they
 18 have undertaken, the four Plaintiffs request service awards of \$10,000 each. Plaintiffs' years of
 19 service made this settlement possible, creating significant value for the State and the Aggrieved
 20 Employees both in terms of the monetary value of the settlement and the deterrent value of a
 21 significant payment from Defendant. This payment serves as a disincentive for employers
 22 throughout California to violate their workers' Labor Code rights. In addition, Plaintiffs spent
 23 significant time discussing their claims with counsel, describing Defendant's employment
 24 practices and pay practices, guiding strategy regarding discovery and claims to pursue, engaging
 25 in long arduous depositions, and remaining in communication with counsel over six years of
 26 litigation. Lastly, by publicly associating their names with these lawsuits, Plaintiffs have
 27 exposed themselves to the risk of retaliation by future potential employers, landlords, and

1 business partners. They will forever be publicly linked with this workers' rights action, visible
 2 through a simple internet search and potentially dismissed as "troublemakers" by would-be
 3 employers or others – and they may never even know it has happened. As set forth in the
 4 declarations of Javier Frias and Greg Carranza, their affiliations with this lawsuit have made it
 5 difficult to secure and retain employment as electricians. Declaration of Javier Frias, ¶ 10;
 6 Declaration of Greg Carranza, ¶ 10. In addition, all four Plaintiffs are executing general releases
 7 of all claims against Defendant.

8 Lastly, Plaintiffs seek Court approval of reimbursement of actually incurred litigation
 9 costs of \$180,000 and fees of 40% of the Total Settlement Amount (i.e., \$600,000). Over the
 10 past six years, Plaintiffs have spent over 3,000 hours prosecuting these claims, with a total
 11 lodestar of over \$2,065,282. This results in a lodestar multiplier of approximately 0.29x, far
 12 below the typical fee multipliers in class action settlements.²

13 The parties have selected ILYM Group, Inc. ("ILYM") as the Settlement Administrator
 14 to implement the settlement. The Settlement Administrator's fees and costs will be deducted
 15 from the Total Settlement Amount.

16 The Individual PAGA Payments will be allocated in direct proportion to the number of
 17 pay periods each Aggrieved Employee worked for Defendant in a Covered Position.

18 IV. ARGUMENT

19 A. A PAGA Settlement Merits Approval Where It Satisfies the Statutory Requirements and Is Fair, Reasonable, and Adequate.

20 Courts typically approve PAGA settlements where "(1) the statutory requirements set
 21 forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable,
 22 and adequate in view of PAGA's public policy goals." *Patel v. Nike Retail Servs.*, No. 14-cv-
 23 4781, 2019 U.S. Dist. LEXIS 77988, at *5 (N.D. Cal. May 8, 2019) (citing *Rincon v. W. Coast*
 24 *Tomato Growers, LLC.*, No. 13-cv-2473, 2018 U.S. Dist. LEXIS 22886 (S.D. Cal. Feb. 12,
 25 2018)). "Because state law enforcement agencies are the real parties in interest, the court's task

26 ² Even using the adjusted lodestar figure to account for recovery in past individual
 27 resolutions, the total lodestar multiplier would be 0.32x. Declaration of Jahan C. Sagafi ("Sagafi
 Decl."), ¶ 46.

1 is to ensure that the state's interest in enforcing the law is upheld." *Rodriguez v. RCO*
 2 *Reforesting, Inc.*, No. 16-cv-2523, 2019 U.S. Dist. LEXIS 12597, at *10 (E.D. Cal. Jan. 24,
 3 2019).

4 Although PAGA does not set forth the particular standard against which a PAGA
 5 settlement should be evaluated, both a California appellate court and the LWDA have provided
 6 guidance for PAGA settlement approval that mirrors the standard for evaluating class action
 7 settlements. The plain language of PAGA is consistent with "a standard requiring the trial court
 8 to determine independently whether a PAGA settlement is fair and reasonable." *Moniz v.*
 9 *Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (Cal. App. 2021); *see also O'Connor v. Uber Techs.,*
 10 *Inc.*, 201 F. Supp. 3d 1110, 1134-35 (N.D. Cal. 2016). In *O'Connor*, the LWDA commented:

11 It is thus important that when a PAGA claim is settled, the relief provided for under
 12 the PAGA be genuine and meaningful, consistent with the underlying purpose of the
 13 statute to benefit the public and, in the context of a class action, the court [must]
 14 evaluate whether the settlement meets the standards of being fundamentally fair,
 15 reasonable, and adequate with reference to the public policies underlying the PAGA.

16 *Id.* at 1133 (quoting California Labor and Workforce Development Agency's Comments on
 17 Proposed PAGA Settlement at 2-3 (internal quotation marks omitted)).

18 Relevant factors for a PAGA settlement include the "strength of the plaintiffs' case; the
 19 risk, expense, complexity and likely duration of further litigation. . . ; the amount offered in
 20 settlement; the extent of discovery completed and the stage in the proceedings; the experienced
 21 and views of counsel; [and] the presence of a governmental participant[.]" *Id.* at 1120 (quoting
 22 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The *Moniz* court held that "a
 23 trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and
 24 adequate in view of PAGA's purposes to remediate present labor law violations, deter future
 25 ones, and to maximize enforcement of state labor laws." *Moniz*, 72 Cal. App. 5th at 77, 127
 26 (noting that "many of the factors used to evaluate class action settlements bear on a settlement's
 27 fairness" and reciting the factors above); *Basiliali v. Allegiant Air, LLC*, No. 18-cv-3888, 2019
 28 U.S. Dist. LEXIS 228250, at *8 (C.D. Cal. July 1, 2019) (quoting *Patel*, 2019 U.S. Dist. LEXIS
 77988, at *6). A PAGA settlement should be approved when "a PAGA plaintiff has adequately

1 represented the state's interests, and hence the public interest." *Moniz*, 72 Cal. App. 5th at 89.

2 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate, and Should Be
Approved.**

3 Because of the similarities between PAGA actions and class actions, California federal
4 courts routinely apply the "fair, reasonable, and adequate" analysis found in class action
5 settlement jurisprudence to PAGA settlements. *See Haralson v. U.S. Aviation Servs., Corp.*, 383
6 F. Supp. 3d. 959, 966, 972 (N.D. Cal. 2019) (citing *Jordan v. NCI Grp., Inc.*, No. EDCV 16-
7 1701, 2018 U.S. Dist. LEXIS 25297, at *5 (C.D. Cal. Jan. 5, 2018) (collecting cases)). In
8 determining whether a proposed Rule 23 settlement meets the fair, reasonable, and adequate
9 standard, courts consider various factors, including:

10 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely
11 duration of further litigation; (3) the risk of maintaining class action status
12 throughout the trial; (4) the amount offered in settlement; (5) the extent of
13 discovery completed and the stage of the proceedings; (6) the experience and
view of counsel; (7) the presence of a governmental participant; and (8) the
reaction of the class members of the proposed settlement.

14 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (citations omitted).

15 When determining whether to approve a class settlement,

16 the court's intrusion upon what is otherwise a private consensual agreement
17 negotiated between the Parties to a lawsuit must be limited to the extent necessary
18 to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating Parties, and that the
settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

19 *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Given the
20 harmonious interpretation of Rule 23 and PAGA settlement requirements, this analysis
21 applies with equal force to PAGA settlements such as this one.

22 **1. Strength of the Plaintiffs' Case**

23 "The initial fairness factor addresses Plaintiffs' likelihood of success on the merits and
24 the range of possible recovery." *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 445 (E.D.
25 Cal. 2013) (citing *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 964-65 (9th Cir. 2009)). To
26 succeed on the merits at trial, Plaintiffs would have to prove that: (1) the contemporaneously
27 entered meal and rest break attestations in the Aggrieved Employees' timekeeping records

1 confirming their ability or inability to take a meal and/or rest break, and the meal break waivers,
2 were deficient, (2) Plaintiffs incurred costs for mileage for the work use of their personal
3 vehicles, personal cell phone use for work purposes, and/or tools for work purposes, reported
4 those expenses to SolarCity (or were prevented from doing so), and SolarCity failed to
5 reasonably reimburse them, (3) SolarCity failed to properly include premiums in overtime pay
6 calculations, (4) SolarCity was aware or should have been award that Aggrieved Employees
7 were not being compensated for all hours worked and failed to compensate the Aggrieved
8 Employees for all hours worked, (5) the resulting wage statements were deficient, and/or (6)
9 Aggrieved Employees were owed wages upon termination of employment, which SolarCity
10 willfully failed to pay.

11 Although Plaintiffs believe that their claims are meritorious, they recognize that
12 continued litigation poses significant risks. First, and most powerfully, as the parties negotiated
13 the settlement, the Supreme Court was considering in *Viking River* whether and how much to
14 limit plaintiffs' ability to pursue PAGA claims in court on a representative basis, or whether
15 PAGA claims could be compelled to individual arbitration. After the settlement was reached, the
16 Supreme Court held in *Viking River* that the Federal Arbitration Act requires individual
17 arbitration of PAGA claims, after which, defendants may argue that the remaining representative
18 PAGA claims should be dismissed. There is a risk of that outcome here. Furthermore,
19 uncertainty in this area remains, with the California Supreme Court soon to resolve questions left
20 open by *Viking River*,³ followed by likely further opportunities for the U.S. Supreme Court to
21 change the legal landscape again. The unsettled state of the law posed an existential threat to the
22 litigation, creating a very real possibility that no absent Aggrieved Employees could recover
23 any penalties without stepping forward individually, and that, as a practical matter, the State
24 would recover nothing. If the claims were compelled to individual arbitration, the vast majority

³ Pending before the California Supreme Court is *Adolph v. Uber Technologies, Inc.*, Case No. S274671, which will address whether an aggrieved employee who has been compelled to arbitrate claims under PAGA that are premised on Labor Code violations actually sustained by the aggrieved employee maintains standing to pursue PAGA claims arising out of events involving other employees in court or in any other forum.

1 of Aggrieved Employees would, as a practical matter, have no ability to recover at all, because
 2 they would not know of their legal rights and/or it would be prohibitively expensive and time-
 3 consuming for them to litigate their claims individually.

4 Second, SolarCity has argued that these representative claims cannot be tried in a single
 5 proceeding in an efficient manner on behalf of all Aggrieved Employees given the number of
 6 employees and claims at issue. This is another area of legal uncertainty and risk, that will be
 7 addressed by the California Supreme Court next year. *See Estrada v. Royalty Carpet Mills, Inc.*,
 8 76 Cal. App. 5th 685 (Cal. Ct. App. Mar. 23, 2022), rev. granted, 511 P.3d 191 (June 22, 2022).

9 Third, as to liability, SolarCity would be expected to vigorously assert merits defenses to
 10 each claim, as explained in Section II.A above.

11 Fourth, should Plaintiffs prevail on the merits, the Court might exercise its discretion to
 12 depart downward from the civil penalties set forth in PAGA. *See* Cal. Lab. Code section
 13 2699(e)(2); *see Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (the court found
 14 that a “significant” reduction in the amount of civil penalties awarded in settlement was
 15 “appropriate” in part because the employer did not “deliberately evad[e] a clear obligation to
 16 provide legally required pay and benefits to employees”). This is not theoretical. In practice,
 17 some courts have reduced PAGA penalties by substantial percentages. *See, e.g., Carrington v.*
 18 *Starbucks Corp.*, 30 Cal. App. 5th 514, 529 (2014) (PAGA penalties reduced by 90%, to \$5 per
 19 pay period, after trial where violations had been proved); *Parr v. Golden State Overnight*
 20 *Delivery Serv., Inc.*, 2014 Cal. Super. LEXIS 1551 (Alameda Super. Ct. Jul. 10, 2014) (PAGA
 21 penalties reduced by 95%); *Fleming v. Covidien, Inc.*, No. EC CV 10-1487, 2011 U.S. Dist.
 22 LEXIS 154590, at *8-9 (C.D. Cal. Aug. 12, 2011) (reducing penalty award by 82% where
 23 defendant was “not aware” that its actions violated the law).

24 Fifth, even were Plaintiffs to prevail at trial on behalf of all Aggrieved Employees and
 25 secure a judgment of substantial PAGA penalties, Defendant would surely appeal, introducing
 26 delay and the possibility of no recovery at all for Plaintiffs and the Aggrieved Employees.
 27 Humphrey Decl., ¶ 43-46 (setting forth the potential value of each of the claims and assessing

1 strengths and weaknesses).

2 Here, the Settlement provides the State of California and the Aggrieved Employees with
 3 a meaningful recovery of penalties, whereas when *Viking River* was pending, there was a risk of
 4 \$0 in recovery. “[I]n light of the challenges Plaintiffs would face moving forward, the proposed
 5 settlement represents a fair and adequate resolution of Plaintiffs’ claims.” *Ford v. CEC Entm’t Inc.*, No. 14-cv-677, 2015 U.S. Dist. LEXIS 191966, at *9-10 (S.D. Cal. Dec. 14, 2015); *see also G. F. v. Contra Costa Cnty.*, No. 13-cv-03667, 2015 U.S. Dist. LEXIS 159597, at *24 (N.D. Cal. Nov. 25, 2015) (“Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case.”) (citation omitted).

10 **2. Risk, Expense, Complexity, and Likely Duration of Further Litigation**

11 In evaluating this factor, courts consider “the probable costs, in both time and money, of
 12 continued litigation.” *Barbosa*, 297 F.R.D. at 446 (citation omitted). In general, “unless the
 13 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
 14 expensive litigation with uncertain results.” *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*,
 15 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted). When a party continues to deny
 16 liability, there is an inherent risk in continuing litigation. *See Thieriot v. Celtic Ins. Co.*, No. 10-
 17 cv-4462, 2011 U.S. Dist. LEXIS 44852, at *13 (N.D. Cal. April 21, 2011); *cf. Greko v. Diesel U.S.A., Inc.*, No. 10-cv-2576, 2013 U.S. Dist. LEXIS 60114, at *14 (N.D. Cal. Apr. 26, 2013)
 18 (“[E]ven with a strong case, further litigation would be time-consuming and expensive for both
 19 sides.”). There is a risk when an “adverse judgment . . . could result in either a diminished
 20 recovery or no recovery at all.” *Patel*, 2019 U.S. Dist. LEXIS 77988, at *8. In short, “legal
 21 uncertainty favors approval of a settlement.” *Id.* at *7 (citing *Browning v. Yahoo! Inc.*, No. C04-
 22 01463, 2007 U.S. Dist. LEXIS 86266 (N.D. Cal. Nov. 16, 2007)).

23 In this case, the additional costs, delay, and risk inherent in moving forward to trial and
 24 likely appeal strongly weigh in favor of settlement Humphrey Decl., ¶ 43-46.

25 **3. Amount Offered in Settlement**

26 “[S]ettlement is about compromise, a yielding of the highest hopes in exchange for

certainty and resolution.” *Barbosa*, 297 F.R.D. at 447 (citation omitted). Here, the Total Settlement Amount of \$1,500,000 represents a reasonable compromise of Plaintiffs’ claims given all the risk factors. Although Plaintiffs believe that their claims are meritorious and that they could recover substantially more in successful litigation, Plaintiffs also recognize that the risks outlined above strongly support the settlement. In estimating SolarCity’s potential exposure, Plaintiffs also considered the risk that the Court would refuse to “stack” PAGA penalties, thus significantly limiting the recoverable PAGA penalties.

Plaintiffs’ exposure analysis is premised on SolarCity’s data listing approximately 6,210 Aggrieved Employees and a total of 451,897 pay periods. Below is a summary of the analysis:

Claim	Estimated Maximum Penalties
Failure to Pay Minimum Wage	\$1,148,400
Failure to Provide Meal Breaks	\$451,900 or \$20,795,000
Failure to Provide Rest Breaks	\$451,900 or \$20,795,000
Failure to Reimbursement Work Expenses	\$5,309,800
Failure to Provide Accurate Itemized Wage Statements	\$0 or \$41,590,000
Failure to Timely Pay Wages Upon Termination	\$824,000
Total Potential Penalties	\$7,714,000 or \$89,313,800

Humphrey Decl. ¶¶ 43-46.

There are two alternate meal break and wage statement calculations, each of which relies on one of two assumptions: (1) all meal period attestations are invalid, such that SolarCity would owe a premium for each pay period in which there is a meal break that was not taken and a premium was not paid, or (2) all meal period attestations are sufficient to avoid liability, reducing meal break and wage statement penalties. Humphrey Decl. ¶ 43. The rest break calculation applies the same assumptions. *Id.* ¶ 43. The reimbursement figure represents Aggrieved Employees’ mileage penalties less 23% of Aggrieved Employees who, at some point during their employment, submitted a mileage reimbursement request, and less an additional 30% of Aggrieved Employees because some Aggrieved Employees were passengers and therefore incurred no mileage costs, since the mileage reimbursement claims rest on the theory that Aggrieved Employees drove personal vehicles from site to site during the day, transporting coworkers with them. *Id.* ¶ 43. All calculations use initial violation rates. *See Bernstein v.*

1 *Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding that the airline “was not notified by
 2 the labor commissioner or any court that it was subject to the California Labor Code until the
 3 district court partially granted plaintiffs’ motion for summary judgment[,]” and therefore
 4 heightened penalties did not apply for Labor Code violations that occurred before such
 5 notification); *Gunther v. Alaska Airlines, Inc.* 72 Cal App. 5th 334, 355-56 (2021).

6 The \$1,500,000 recovery equals 19.5% of the maximum exposure of \$7,714,000 and
 7 1.6% of the higher \$89,313,800 figure. Given the serious obstacles to Plaintiffs prevailing at
 8 trial on all of their PAGA claims, winning all possible penalties, and successfully defending the
 9 victory on appeal, this is a strong result. The 2.0 to 14.1% result compares favorably with those
 10 in other settlements approved in this district. *See, e.g., McLeod v. Bank of Am., N.A.*, No. 18-cv-
 11 3294, 2018 U.S. Dist. LEXIS 195314, at *5, 10, 14 (N.D. Cal. Nov. 14, 2018) (approving PAGA
 12 penalties approximately 1% of maximum penalties); *Ruch v. AM Retail Grp., Inc.*, No. 14-cv-
 13 05352, 2016 U.S. Dist. LEXIS 133832, at *20-21 (N.D. Cal. Sept. 28, 2016) (approving PAGA
 14 penalties less than 1% of maximum penalties); *Hartley v. On My Own, Inc.*, 2020 U.S. Dist.
 15 LEXIS 154315, at *10-11 (E.D. Cal. Aug. 25, 2020) (approving settlement with PAGA penalty
 16 of 3.5% of maximum potential penalties, resulting in average payment per employee of \$61);
 17 *Haralson*, 383 F. Supp. 3d 959, 972-74 (N.D. Cal. June 7, 2019) (citing cases reflecting approval
 18 of settlements with PAGA penalties at 0.2% to 1.1% of the total potential value); *Ramirez v.*
 19 *Benito Valley Farms, LLC*, No. 16-cv-4708-LHK, 2017 U.S. Dist. LEXIS 137272, at *14-15
 20 (N.D. Cal. Aug. 25 2017) (approving PAGA penalties of less than 4.5% of maximum penalties);
 21 *cf. Harvey v. Morgan Stanley Smith Barney LLC*, No. 18-cv-2835, 2019 U.S. Dist. LEXIS
 22 159258, at *8-11 (N.D. Cal. Sep. 5, 2019) (approving class/PAGA settlement valued at 2% to
 23 6.6% of total exposure, depending on different analyses of the value of the claims, over a class
 24 member’s objection that the settlement amount was too low). The state court outcome in
 25 *Carrington*, 30 Cal. App. 5th 504, also supports the fairness of the settlement given the many
 26 risk factors presented here. In *Carrington*, the plaintiff sought nearly \$70 million in PAGA
 27 penalties. After prevailing on liability, the plaintiff was unsuccessful in convincing the trial
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1 court to award multiple penalties stemming from the same underlying violation, and the court
 2 significantly reduced penalties, awarding 0.2% of the total requested penalties; the court of
 3 appeal affirmed. *Id.* at 529.

4 Below are data regarding another class action settlement in which PAGA claims were
 5 resolved:

Case Name	<i>Hartley v. On My Own, Inc.</i> , No. 17-cv-353, 2020 U.S. Dist. LEXIS 154315 (E.D. Cal. Aug. 25, 2020)
Released Claims	PAGA penalties for unpaid overtime and travel time, meal and rest break violations, unreimbursed business expenses, and failure to provide accurate wage statements
Total Settlement Fund	\$575,000
Class and Collective Members	1,467
Average Recovery	\$61.18
Attorneys' Fees and Costs	Fees: \$156,714 Costs: \$6,802.87

13 While a larger settlement amount was theoretically possible, “the very essence of a
 14 settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.” *Linney*
 15 *v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citations and internal quotation
 16 marks omitted). The risk of a much smaller award of penalties, or no award at all, was distinctly
 17 present in this case, particularly given the uncertainty posed by *Viking River*. Here, the
 18 Settlement substantially benefits the State and its workers by providing meaningful relief and
 19 disincentivizing Labor Code violations. This factor, therefore, weighs in favor of approval.

20 Also, the Parties’ settlement is limited in scope to a release of PAGA civil penalty claims
 21 only, for penalties that under the law are largely paid to the State, not individual employees.
 22 Significantly, the settlement agreement does not release any individual claims for wages,
 23 premium pay, expenses or statutory penalties that any employee covered by the settlement may
 24 have.

25 **4. The Extent of Discovery Completed and the Stage of the Proceedings**

26 “The extent of discovery may be indicative of the parties’ knowledge of the case and is
 27 therefore relevant to determining the overall fairness of a settlement.” *Nat'l Rural Telecomm*

1 *Coop.*, 221 F.R.D. at 527 (citation omitted); *see also Patel*, 2019 U.S. Dist. LEXIS 77988, at
 2 *11-12 (“Because the parties have engaged in extensive discovery and worked on this case for
 3 several years, this factor weighs in favor of finding the settlement fair, reasonable,
 4 and adequate.”).

5 During the seven years from prefiling investigation to the present, Plaintiffs have
 6 gathered significant evidence, interviewing witnesses, collecting documents, drafting over 25
 7 witness declarations, and researching claims. In litigation, Plaintiffs zealously litigated various
 8 issues including discovery issues, enforceability of individual arbitration agreements in both this
 9 action and the related arbitrations. In the five individual arbitrations, Plaintiffs intensively
 10 litigated Plaintiffs’ claims with respect to both liability and damages, with the arbitration
 11 hearings fast approaching. Plaintiffs engaged an expert statistician and a forensic cell phone
 12 expert. Both parties took depositions to probe the liability and remedies issues. Throughout it
 13 all, Plaintiffs carefully prepared for and participated in four sets of settlement discussions with
 14 four mediators in discussion with four sets of SolarCity’s counsel. As part of those discussions,
 15 the parties exchanged voluminous data, extensive documentary evidence, and detailed mediation
 16 briefs and damages analyses. Humphrey Decl., ¶¶ 33-37. Where, as here “[C]lass [C]ounsel
 17 possess[es] a sufficient understanding of the issues involved and the strengths and weaknesses of
 18 the case,” this factor favors settlement. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848,
 19 852 (N.D. Cal. 2010); *see also Lewis v. Starbucks Corp.*, No. 07-cv-490, 2008 U.S. Dist. LEXIS,
 20 at *17 (E.D. Cal. Sept. 11, 2008) (“[A]pproval of a class action settlement is proper as long as
 21 discovery allowed the parties to form a clear view of the strengths and weaknesses of their
 22 cases”).

23 **5. Experience and View of Counsel**

24 “The recommendations of Plaintiffs’ counsel should be given a presumption of
 25 reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *see also In re*
 26 *Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) (“Parties represented by competent
 27 counsel are better positioned than courts to produce a settlement that fairly reflects each party’s

1 expected outcome in litigation.”). Plaintiffs’ counsel have a proven track record of successfully
 2 litigating hundreds of PAGA actions and other representative actions. *See Walsh v. CorePower*
 3 *Yoga, LLC*, No. 16-cv-05610, 2017 U.S. Dist. LEXIS 20974, at *24-25 (N.D. Cal. Feb. 14, 2017)
 4 (“[Outten & Golden LLP] have a proven track record in the prosecution of class actions as they
 5 have successfully litigated and tried many major class action cases.”); *Perez v. Allstate Ins. Co.*,
 6 No. 11-cv-1812, 2014 U.S. Dist. LEXIS 130214, at *69 (E.D.N.Y. Sept. 16, 2014) (“the Court
 7 concludes that O&G has the requisite experience in handling class actions and the particular
 8 claims asserted in the instant action, are well versed in the applicable law, and have the resources
 9 necessary to represent the . . . Class fairly and adequately.”). Plaintiffs’ counsel endorses the
 10 Settlement as fair, adequate, and reasonable, and believe that it provides an excellent outcome
 11 for the State and Aggrieved Employees, particularly in light of the significant risks, costs, and
 12 delays of further litigation. Humphrey Decl., ¶¶ 3-8, 44. This factor, therefore, weighs in favor
 13 of approval.

14 **6. Presence of a Governmental Participation**

15 Plaintiffs act as proxies of the State of California, with the implicit blessing of the
 16 LWDA, having properly submitted their PAGA Notice at the outset of the case and
 17 contemporaneously with the filing of this motion at the action’s conclusion. The LWDA has
 18 never asserted any objection, criticism, or concern to the deputization of Plaintiffs as PAGA
 19 representatives, and while its silence is not consent, the absence of objection provides some
 20 assurance that the LWDA has not found any deficiencies in the Settlement.

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1 **C. The Proposed Service Awards Are Fair and Reasonable.**

2 Service awards compensate named plaintiffs for the time they put into a case and
 3 recognize the risks and burdens they bear by stepping forward and pursuing claims on behalf of
 4 other aggrieved employees and the State. *See, e.g., Abelar v. Am. Residential Servs., LLC*, No.
 5 19-cv-726, 2019 U.S. Dist. LEXIS 198772, at *16 (C.D. Cal. Nov. 14, 2019) (approving service
 6 award for named plaintiffs in PAGA action as “reasonable compensation for the time and
 7 acceptance of adverse employment risk by Plaintiff”). They also properly recognize the value
 8 created by the PAGA representatives; without a plaintiff, there would truly be no litigation and
 9 no settlement. Service awards are appropriate in a representative action because they provide an
 10 incentive to bring important cases that have a broad beneficial impact on others, not just the
 11 plaintiff herself. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (affirming
 12 service awards to the named plaintiffs “compensating them for their efforts in bringing the
 13 action”).

14 Plaintiffs each request approval of a \$10,000 service payment (for a total of \$40,000) as
 15 compensation for the efforts they made on behalf of the State and Aggrieved Employees.

16 [C]riteria courts may consider in determining whether to make an incentive award
 17 include: 1) the risk to the class representative in commencing suit, both financial
 18 and otherwise; 2) the notoriety and personal difficulties encountered by the class
 19 representative; 3) the amount of time and effort spent by the class representative;
 4) the duration of the litigation and; 5) the personal benefit . . . enjoyed by the
 class representative as a result of the litigation.

20 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1394-95 (2010) (citations and
 21 internal quotation marks omitted).

22 Each of these factors weighs strongly in favor of the requested service awards. First,
 23 Plaintiffs undertook significant risk – both financially and reputationally – by associating their
 24 names with large-scale legal action against their employer. Second, Plaintiffs spent significant
 25 time assisting counsel with discovery, and the work they performed with respect to their
 26 individual arbitrations greatly helped advance the PAGA litigation by illustrating liability issues
 27 and the commonality of employees’ experiences. Specifically, Plaintiffs provided factual

1 information to counsel and maintained communication with them throughout the case; reviewed
 2 the complaints before they were filed; responded to discovery requests, including searching for
 3 any potentially relevant documents or records in their possession; communicated with counsel
 4 before, during, and after the mediations and arbitration proceedings; assisted in counsel's
 5 preparation for mediation and the arbitrations; remained on-call and available to discuss the
 6 litigation and settlement negotiations throughout the past seven years. *See* Declarations of Ravi
 7 Whitworth, Greg Carranza, Javier Frias, and Joshua Arguelles.

8 **D. The Requested Fees and Costs Are Fair and Reasonable.**

9 Here, the attorneys' fees requested are far less than Plaintiffs' counsel's lodestar, which
 10 further demonstrates that the fees requested are reasonable. Plaintiffs' counsel's lodestar is
 11 \$2,065,282. Sagafi Decl. ¶¶ 40-45; Humphrey Decl., ¶¶ 48-52. Thus, the requested fee equals a
 12 0.29x multiplier. *See Alvarez v. Farmers Ins. Exch.*, No. 14-cv-574, 2017 U.S. Dist. LEXIS
 13 119128, at *14 (N.D. Cal. Jan. 17, 2017) (fee award that was 53% of lodestar was "objectively
 14 reasonable under the lodestar method of calculation"); *Basiliali*, 2019 U.S. Dist. LEXIS 228250,
 15 at *11 (finding 33.3% of the common fund in PAGA settlement reasonable where lodestar
 16 significantly exceeded requested fee); *Abelar*, 2019 U.S. Dist. LEXIS 198772, at *14-15 (same);
 17 *Taylor v. Shippers Transp. Express, Inc.*, No. 13-cv-2092, 2015 U.S. Dist. LEXIS 191461, at
 18 *51-54 (C.D. Cal. May 14, 2015) (finding 33 1/3% fee reasonable where lodestar multiplier was
 19 0.74x); *Dudum v. Carter's Retail, Inc.*, No. 14-cv-988, 2016 U.S. Dist. LEXIS 166881, at *23-27
 20 (N.D. Cal. Dec. 2, 2016) (approving 31.84% fee, where lodestar multiplier was 0.87x); *Starks v.*
 21 *Vortex Industries*, 53 Cal. App. 5th 1113, 1120 (2020) (approving \$630,000 attorney fee award
 22 in PAGA Action where gross settlement was \$675,000).

23 Plaintiffs' counsel in this case have spent seven years, thousands of hours, and \$180,821
 24 in out-of-pocket costs to overcome obstacles to recovery and press every opportunity to achieve
 25 a result for the State and the Aggrieved Employees. Sagafi Decl. ¶ 47; Humphrey Decl. ¶ 52.
 26 Because the Settlement Agreements limits Plaintiffs' costs, Plaintiffs' counsel requests \$180,000
 27

1 and will not be reimbursed for the total amount of actual out-of-pocket costs. See Settlement
 2 Agreement, ¶ IV.4.

3 There were moments when it might have been tempting for counsel to give up and focus
 4 on other more profitable matters. In the end, this modest partial recovery of fees is warranted to
 5 ensure that capable lawyers remain willing to protect workers' rights to be free from Labor Code
 6 violations in future situations.

7 **E. Approval of the Settlement Administrator's Costs Is Appropriate.**

8 Plaintiffs are confident that ILYM will successfully administer the settlement, and it
 9 satisfies the requirements in the District Guidance. *See Declaration of Sean Hartranft ("Hartranft*
 10 *Decl.").*

11 Plaintiffs engaged four different settlement administrators in a competitive bidding
 12 process and chose ILYM, whose fee will not exceed \$22,500. Sagafi Decl., ¶ 34. ILYM has
 13 administered numerous settlements for Plaintiffs' counsel in the past two years.⁴ *Id.* at ¶ 35.
 14 ILYM maintains a Security Summary and Protocol to securely handle individuals' data and
 15 maintains insurance in case of errors. *See* Hartranft Decl. ¶ 2. Based on ILYM's quality and the
 16 low cost of their bid, Plaintiffs selected them to administer this settlement.

17 Based on the foregoing, Plaintiffs respectfully request that the Court approve payment of
 18 the Claims Administrator's Costs from the Settlement Fund.

19 **CONCLUSION**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) approve the
 21 Settlement Agreement; (2) approve the requests for attorneys' fees and costs and the Service
 22 Awards; and (3) dismiss the PAGA claims with prejudice.

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25 ⁴ *See Megan Juric v. Dicks Sporting Goods*, No. 20-cv-651 (W.D. Penn.); *Lombardi v.*
 26 *ShopKeep Inc.*, No. 521461/2021 (N.Y. Sup Ct., Kings County); *Brown v. Sisense Inc.*, No.
 27 531125/2022; (N.Y. Sup. Ct., Kings County); *Chew v. Syracuse University*, No. 525007/2021
 (N.Y. Sup. Ct., Kings County); *Stang v. Paycor, Inc.*, No. 20-cv-00882 (S.D. Ohio); *Hill v.*
Marathon, No. CIVMSC20-00518 (Cal. Sup. Ct., Contra Costa County); and *Castillo v. Bank of*
America, No. 17-cv-580.

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1 Dated: January 13, 2023

2 Respectfully submitted,

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